



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON, D.C. 20370-5100

TRG

Docket No: 2682-00

2 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF EX-IC2 [REDACTED], USNR,
[REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he transferred to the Retired Reserve with eligibility for retired pay at age 60, vice being discharged on 15 August 1994.

2. The Board, consisting of Mr. Zsalman, Mr. Pfeiffer and Mr. McCulloch, reviewed Petitioner's allegations of error and injustice on 24 October 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Naval Reserve for six years on 16 August 1988 at age 49 in the rate of IC2 (E-5). He then earned five consecutive qualifying years for reserve retirement. At the end of the anniversary year on 15 August 1993 he was credited with 15 years of qualifying service for retirement. On 31 December 1993 he transferred to the Individual Ready Reserve (IRR). There is no explanation why this transfer occurred. During the period from 16 August 1993 to 31 December 1993 he earned 12 retirement points by drilling. He was honorably discharged on 15 August 1994 at the expiration of his enlistment.

The record indicates that he was recommended for reenlistment. Petitioner became 60 years of age on 18 March 1999.

d. Petitioner states that he was dropped from his pay billet and denied reenlistment. He states that he was told that he would be eligible for retirement at age 60 based on his 15 years of qualifying service.

e. The Board is aware that the Reserve Transition Benefits (RTB) program allows for retirement with eligibility for retired pay at 60 with 15 years of qualified service if an individual was involuntarily dropped from a pay billet and requested retirement.

f. The Board is also aware the Uniform Retirement Date Act, 5 U.S.C. 8301 requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board is aware that there is nothing in the record to support Petitioner's contention that he was involuntarily dropped from his pay billet. However, it appears reasonable to assume that this was the case since he had an excellent record of participation for over five years. It is clear that whatever the circumstances, Petitioner should have been briefed on the requirements for retirement under the RTB program and assisted in submitting a retirement request if he was eligible.

Given the circumstances, the Board now concludes that Petitioner's record should be corrected to show that he transferred to the Retired Reserve in the rate of IC2 under the provisions of the RTB. Since the Uniform Retirement Date Act requires retirement on the first day of the month, his transfer to the Retired Reserve should be effective on 1 January 1994. Since Petitioner is now 60 years old, the record should be further corrected to show that he transferred to the Retired List on 18 March 1999, his 60th birthday.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status on the Retired List.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve on 1 January 1994 in the rate of IC2. The record should be further corrected to show that he transferred to the Retired List on 18 March 1999 his 60th

birthday.

b. That this Report of Proceedings be filed in Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



For W. DEAN PFEIFFER
Executive Director